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14 Attorneys for Defendant
Uber Technologies, Inc.

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18

19 CAREN EHRET,

20
21 Plaintiff,

22 v.

23 UBER TECHNOLOGIES, Inc.,

24 Defendant.
25
26
27
28

Case No. 3:14-cv-00113-EMC

**DEFENDANT UBER TECHNOLOGIES,
INC.'S FIRST AMENDED ANSWER AND
AFFIRMATIVE DEFENSES**

Judge: Edward M. Chen

ANSWER

1
2 1. Uber admits that it develops a mobile phone application that provides individuals
3 with a means to request third-party transportation services. Uber denies the remaining allegations
4 in this paragraph.

5 2. Denied.

6 3. This paragraph contains legal conclusions to which no response is required. To the
7 extent a response is required, Uber denies the allegations in this paragraph.

8 4. Uber admits that it is headquartered in San Francisco, California. Uber denies the
9 remaining allegations in this paragraph.

10 5. Uber admits that Plaintiff originally brought this action on October 1, 2012 in the
11 Circuit Court of Cook County, Illinois in an action entitled *Ehret v. Uber Technologies, Inc.*, Case
12 No. 12 CH 36714 and that that action was dismissed. Uber denies the remaining allegations in
13 this paragraph.

14 6. Denied.

15 7. Uber admits that the Uber User Terms and Conditions stated:

16 This Agreement shall be governed by California law, without regard to the choice
17 or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims
18 or causes of action arising out of or in connection with this Agreement or the
Service or Software shall be subject to the exclusive jurisdiction of the state and
federal courts located in the City and County of San Francisco, California.

19 on September 9, 2012. Uber denies the remaining allegations in this paragraph.

20 8. Uber lacks knowledge or information sufficient to form a belief about the truth of
21 the allegations in this paragraph, and on that basis denies those allegations.

22 9. Admitted.

23 10. Uber admits that its smartphone application allows users of the application to
24 request and pay for third-party transportation services. Uber denies the remaining allegations in
25 this paragraph.

26 11. Denied.

27 12. Denied.

28 13. Denied.

1 14. Denied.

2 15. Denied.

3 16. Denied.

4 17. This paragraph contains legal conclusions to which no response is required. To the
5 extent a response is required, Uber denies the allegations in this paragraph.

6 18. This paragraph contains legal conclusions to which no response is required. To the
7 extent a response is required, Uber denies the allegations in this paragraph.

8 19. This paragraph contains legal conclusions to which no response is required. To the
9 extent a response is required, Uber denies the allegations in this paragraph.

10 20. This paragraph contains legal conclusions to which no response is required. To the
11 extent a response is required, Uber denies the allegations in this paragraph.

12 21. This paragraph contains legal conclusions to which no response is required. To the
13 extent a response is required, Uber denies the allegations in this paragraph.

14 22. This paragraph contains legal conclusions to which no response is required. To the
15 extent a response is required, Uber denies the allegations in this paragraph.

16 23. This paragraph contains legal conclusions to which no response is required. To the
17 extent a response is required, Uber denies the allegations in this paragraph.

18 24. This paragraph contains legal conclusions to which no response is required. To the
19 extent a response is required, Uber denies the allegations in this paragraph.

20 25. Uber incorporates its previous responses as if fully set forth herein.

21 26. Denied.

22 27. Denied.

23 28. Denied.

24 29. Denied.

25 30. Denied.

26 31. Uber incorporates its previous responses as if fully set forth herein.

27 32. Denied.

28 33. Denied.

1 34. Denied.

2 35. Denied.

3 36. Denied.

4 37. Uber incorporates its previous responses as if fully set forth herein.

5 38. Denied.

6 39. Denied.

7 40. Denied.

8 41. Denied.

9 42. Uber incorporates its previous responses as if fully set forth herein.

10 43. Denied.

11 44. Denied.

12 45. Denied.

13 46. Denied.

14 47. Denied.

15 48. Denied.

16 49. Denied.

17 50. Denied.

18 51. Denied.

19 52. Denied.

20 53. Denied.

21 54. Denied.

22 55. Denied.

23 56. Denied.

24 57. Denied.

25 58. Uber admits that it received correspondence from Plaintiff dated March 24, 2014.

26 Uber denies the remaining allegations in this paragraph.

27 59. Uber admits that Plaintiff has attached an affidavit, but denies the remaining

28 allegations in this paragraph.

1 60. Uber incorporates its previous responses as if fully set forth herein.

2 61. Denied.

3 62. Denied.

4 63. Denied.

5 64. Denied.

6 65. Denied.

7 Denied as to prayer for relief.

8 **DEMAND FOR JURY TRIAL**

9 Uber demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil
10 Procedure.

11 **UBER TECHNOLOGIES, INC.'S AFFIRMATIVE DEFENSES**

12 **AFFIRMATIVE DEFENSE NO. 1: ASSUMPTION OF THE RISK**

13 When Plaintiff opted to use Uber's request services instead of requesting the transportation
14 services directly from the taxi driver, she impliedly assumed the risk that she would not be privy
15 to the full extent of Uber's contractual relationship with the third-party transportation providers
16 who use its software to receive requests for transportation services. A reasonable user of Uber's
17 mobile phone application would understand that Uber will receive a fee each time a user rides with
18 one of the drivers who use Uber's software. By choosing to request transportation services
19 through Uber's software, as opposed to requesting services directly from the taxi driver via
20 telephone call, street hail, or other means, the user assumes the risk that how and when Uber takes
21 this fee may not align perfectly with the user's assumptions or desires. The user could have had
22 more control over these matters if she had chosen to request directly from the taxi driver via
23 telephone call, street hail, or other means, as opposed to using Uber's software.

24 **AFFIRMATIVE DEFENSE NO. 2: LACK OF PRIVACY**

25 The essence of Plaintiff's complaint is, in reality, a contractual dispute between Uber and
26 the third-party drivers who use its software to receive requests for transportation services. As
27 such, Plaintiff lacks privity of contract to bring its claim. Plaintiff is, in essence, complaining that
28 by taking a fee from drivers for its software and other services, Uber is breaching a duty to the

1 drivers in not remitting to the driver the complete 20% gratuity that the customer pays. This
2 amounts to a dispute between Uber and the drivers from whom Uber takes its fee, regarding a
3 contract on which Plaintiff has no right to sue.

4 **AFFIRMATIVE DEFENSE NO. 3: UNCLEAN HANDS**

5 To the extent that it can be shown that Plaintiff in fact knew of Uber's alleged policy
6 before requesting a trip through Uber's software on September 9, 2012, her claims should be
7 barred by the doctrine of unclean hands. If Plaintiff knew of the terms before requesting, she has
8 acted fraudulently in claiming that she was deceived by Uber and that she acted in reliance of its
9 representations about the 20% gratuity. Further, if she knew of the alleged policy before riding,
10 but rode nonetheless, she would be coming before the court with unclean hands regarding the very
11 policy she complains of.

12 **AFFIRMATIVE DEFENSE NO. 4: CONSENT**

13 By using Uber's software to request transportation services, Plaintiff impliedly consented
14 to Uber's collection of a portion of the total amount paid for the trip. She also impliedly
15 consented that she would not be privy to the terms of the contractual relationship between Uber
16 and third-party transportation providers. She also impliedly consented to giving up control to
17 whom her payment would be directed. A reasonable user of a service like Uber would realize that,
18 to survive, the service must collect some fee. Plaintiff impliedly consented to this by requesting
19 transportation services using Uber's software.

20 **AFFIRMATIVE DEFENSE NO. 5: ARBITRATION AGREEMENT**

21 The claims of persons who might otherwise be putative class members are barred by a
22 valid and binding arbitration agreement.

23 Wherefore, Defendant prays for judgment as follows:

- 24 1. That judgment be entered in favor of Defendant against Plaintiff;
- 25 2. That Defendant be awarded its costs of suit;
- 26 3. That Defendant be awarded its attorneys' fees;
- 27 4. That the Court award Defendant such other and further relief as the Court may
- 28 deem proper.

1 DATED: October 17, 2014

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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By /s/ Stephen A. Swedlow

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Stephen A. Swedlow

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Attorneys for Defendant

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Uber Technologies, Inc.

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